

Document No. 3006
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
CHAPTER 30

Statutory Authority: S.C. Code Section 48-39-10 *et seq.*

- R.30-1 Statement of Policy, and
R.30-12 Specific Project Standards for Tidelands and Coastal Waters

Amend R.30-1.D by inserting the following two definitions in proper alphanumeric order and renumbering all following definitions.

(9) Bridge:

(a) Non-vehicular - bridges designed for use by pedestrians, golf carts or other maintenance vehicles, but not cars and trucks; are not docks; and can have a maximum clear width on the deck surface of six feet.

(b) Vehicular - bridges with a clear width on the deck surface of over six feet and designed to support traffic by cars and trucks.

(10) Coastal Island - an area of high ground above the critical area delineation that is separated from other high ground areas by coastal tidelands or waters. An island connected to the mainland or other island only by a causeway is also considered a coastal island. The purpose of this definition is to include all islands except those that are essentially mainland, i.e., those that already have publicly accessible bridges and/or causeways. The following islands shall not be deemed a coastal island subject to this section due to their large size and developed nature: Waites Island in Horry County; Pawleys Island in Georgetown County; Isle of Palms, Sullivans Island, Folly Island, Kiawah Island, Seabrook Island, Edisto Island, Johns Island, James Island, Woodville Island, Slann Island and Wadmalaw Island in Charleston County; Daniel Island in Berkeley County; Edisto Beach in Colleton County; Harbor Island, Hunting Island, Fripp Island, Hilton Head Island, St. Helena Island, Port Royal Island, Ladies Island, Spring Island and Parris Island in Beaufort County.

Amend 30-12.N by deleting the existing section entirely and replacing with the following:

N. Access to Coastal Islands. This section applies to applications for permits for bridges and docks as a means of obtaining access to coastal islands.

(1) Purpose and Intent:

(a) South Carolina has several thousand coastal islands, including barrier islands, sea islands, back barrier islands and marsh hammocks. Almost all of these islands are surrounded by expanses of salt marsh, occasionally bordered by tidal creeks or rivers. Historically, few of these islands have been built upon or altered, and most have been protected by their remoteness and inaccessibility. In recent years, however, a trend toward greater potential for development of these islands has stimulated questions and concerns about the ecological significance of these islands. The South Carolina Department of Natural Resources conducted a field study of a number of non-barrier islands. Their report, *An Ecological Characterization of Coastal Hammock Islands*, December, 2004, has shown that these islands are unique ecosystems with diverse flora and fauna. That study recommends protection and buffering of important habitats and resources associated with these islands.

(b) Access to coastal islands by bridges or docks involves the placement of structures into critical area coastal tidelands and waters that are protected by the statute, the critical area regulations, and by the public trust doctrine.

(c) Construction of bridges within critical area tidelands and waters involves impacts on critical area coastal tidelands and coastal waters, including temporary damages to salt marsh and shellfish beds, temporary increased turbidity, permanent displacement of marshes by installation of pilings, and permanent shading of marsh.

(d) The requirements of R.30-12.N apply only to islands for which a bridge or dock permit is issued, and are not intended to apply to upland areas or to otherwise modify, alter, conflict, create precedent or otherwise impact existing regulations and law.

(2) Eligibility to apply for a bridge permit.

(a) The decision on whether to issue or deny a permit for a bridge to a coastal island must be made with due consideration of the impacts to the public trust lands, critical area, coastal tidelands and coastal waters, weighed against the reasonable expectations of the owner of the coastal island. Giving due consideration to these factors, the Department has determined that some islands are too small or too far from upland to warrant the impacts on public resources of bridges to these islands, and thus no permit for a bridge shall be issued.

(b) Bridge permits, other than non-vehicular bridges for access by the general public, will not be issued in areas of special resource value unless they qualify under the special exceptions in R.30-12.N(10). These are the ACE Basin Taskforce Boundary Area, the North Inlet National Estuarine Research Reserve, and the Cape Romain National Wildlife Refuge.

(c) The Department will not consider applications for bridge access to islands less than two acres in size.

(d) The Department will, however, consider applications for bridge access in the following instances:

(i) Bridges not exceeding 15 feet in total width

(a) where the size of the island is two acres or greater, but less than or equal to three acres, and the distance from the upland and the length of the bridge does not exceed 200 feet;

(b) where the size of the island is greater than three acres but less than or equal to five acres and the distance from the upland and the length of the bridge does not exceed 300 feet;

(c) where the size of the island is greater than five acres, but less than or equal to ten acres and the distance from the upland and the length of the bridge does not exceed 500 feet.

(ii) Bridges may be constructed exceeding 15 feet in total width

(a) where the size of the island is greater than 10 acres, but less than or equal to 30 acres, and the distance from the upland and the length of the bridge does not exceed 500 feet;

(b) where the size of the island is greater than 30 acres and the distance from the upland and the length of the bridge does not exceed 1,500 feet.

(e) Notwithstanding the provision of R.30-12.N(2)(c), the Department shall consider applications for bridge access to coastal islands greater than one acre in size if the distance from the upland is 100 feet or less in distance.

(f) All measurements to coastal islands for the purpose of establishing whether an island may qualify for a bridge permit are taken from upland as defined in this section.

(i) Upland is:

(a) the naturally occurring mainland, and

(b) Waites Island in Horry County; Pawleys Island in Georgetown County; Isle of Palms, Sullivans Island, Folly Island, Kiawah Island, Seabrook Island, Edisto Island, Johns Island, James Island, Woodville Island, Slann Island and Wadmalaw Island in Charleston County; Daniel Island in Berkeley County; Edisto Beach in Colleton County; Harbor Island, Hunting Island, Fripp Island, Hilton Head Island, St. Helena Island, Port Royal Island, Ladies Island, Spring Island and Parris Island in Beaufort County.

(ii) The length measurements for all proposed bridges will be taken from a current Department approved critical area line. The length of a bridge is defined as the distance between critical area lines at each end of the bridge.

(g) In order to apply for a bridge permit, the applicant must submit a survey, produced and stamped by a registered surveyor licensed to practice in South Carolina, showing that the length of the proposed bridge will not exceed the lengths allowed in these regulations.

(3) Dock and Bridge Construction Standards Associated with Coastal Islands.

(a) Docks.

(i) The following standards apply to docks in projects associated with applications for bridge access to coastal islands. The project standards in this section are in addition to the other Department standards applicable to docks.

(ii) The application for the project shall reflect that the applicant has eliminated 75 percent of the number of private residential docks allowed by the Department's critical area permitting regulations as they existed on September 1, 2005. The dock reduction shall be made binding on the land by a conservation easement meeting the requirements of R.30-12.N(4).

(iii) Docks longer than 500 feet over the critical area are prohibited. This is inclusive of pierheads, floats, ramps, mooring piles and other associated structures.

(iv) No boat lifts, davits or similar structures are allowed.

(v) Roofs are not allowed on private docks, but are allowed on community docks.

(vi) All docks proposed for an island must be shown on a dock master plan that is submitted with the bridge application.

(b) Development Plan.

(i) All bridges shall be the minimum possible size and height to accommodate the intended use, aligned to minimize environmental damage, and constructed of materials approved for marine applications.

(ii) The applicant must submit a site development plan.

(c) Lighting on bridges must be designed with the minimum illumination necessary to meet local, state, or federal requirements for safety and navigation.

(d) All utilities servicing the island must be located within the footprint of the bridge and attached to the bridge if feasible, but must not be placed overhead.

(e) Onsite Disposal Systems (OSDS). If the island is to be served by OSDS, all alternative systems must meet a horizontal setback requirement of 150 feet from any part of the OSDS to the Department critical line.

(4) Conservation easements. Whenever a reduction in environmental impact is either required or offered, the affirmative commitment must be accomplished by a conservation easement, the conservation easement must meet the requirements of this part.

(a) The conservation easements shall be prepared in accordance with the South Carolina Conservation Easements Act of 1991, S.C. Code Ann. Section 27-8-10 through 27-8-120, and any amendments thereto (the “Act”).

(b) The conservation easements must provide for permanent protection in perpetuity that will run with the title to the land.

(c) The conservation easement must incorporate by reference a recorded plat that depicts the environmental impact reduction. Once the conservation easement and associated plat are properly recorded in the chain of title, the failure to show the required delineations on a future plat shall not affect the validity of the conservation easement.

(d) The conservation easement must be held by the state or a land trust with a proven track record in the region and with the resources to enforce the terms of the easement. The conservation easement must provide for rights of enforcement by the Department and by any organization authorized to be a “holder” under the Act, provided that any legal action by a party other than the Department taken to enforce the terms of the conservation easement must include the Department as a party, and no such action may be settled without the written consent of the Department.

(e) Draft conservation easements must be submitted to the Department for review to determine compliance with the Act and the applicable limits and commitments related to the permit at issue, prior to issuance of the bridge permit.

(f) Prior to commencement of any work under a permit issued under this section, the recorded conservation easement must be filed with the Department, accompanied by an opinion of an attorney duly licensed to practice in South Carolina, certifying that the instrument has been duly executed by the fee simple owners of the property, that the individual signers of the instrument have full legal authority to execute the instrument, that the instrument has been properly recorded and indexed in the office of the county Register of Deeds, and that all holders of prior mortgages or other liens on the property have consented to the instrument and have subordinated their liens to the conservation easement.

(5) The owners of bridges are entitled to repair and maintain existing bridges as allowed under R.30-5.D and any applicable county or municipal regulations.

(6) If an existing bridge to a coastal island is destroyed or rendered unusable by natural causes or accidental destruction, the owner shall be entitled to a permit to replace the bridge with a like bridge that imposes no greater adverse impact on the critical area as the one destroyed.

(7) Permits for expansion of existing bridges will be processed as new bridges and must meet all applicable standards.

(8) Causeways.

(a) Permanent filling of critical areas for access to coastal islands is prohibited, except for fill associated with existing useable causeways.

(b) Existing useable causeways are defined as those causeways that have a drivable lane above the critical area.

(i) Permits for fill associated with existing usable causeways shall be granted only for minor fills that are minimized by use of containment structures to limit to the maximum extent feasible the

square footage of fill, and where the fill would cause less damage to the critical area than would be caused by construction of a new bridge or other access structure.

(ii) Mitigation for critical area fill at a ratio of 2:1 will be required for fill associated with existing usable causeways.

(9) Non-vehicular bridges to be utilized by the general public on publicly owned lands for purely recreational, educational, or other institutional purposes will be exempt from all other sections of R.30-12.N and will be allowed by the Department provided there is no significant harm to coastal resources and the following minimum standards are met.

(a) The applicant must demonstrate that the structure is necessary for the overall planned use of the site.

(b) The structure must be aligned to minimize environmental impacts.

(10) Special Exceptions.

(a) Islands one acre or larger that do not qualify for a bridge permit under these regulations may apply for a special exception. To receive a special exception, the applicant shall present clear and convincing evidence that granting the bridge permit will serve an overriding public interest.

(b) For an application to meet the overriding public interest test, it must demonstrate by clear and convincing evidence that it will create overriding public benefits resulting from mitigation and diminished impacts to public trust resources compared with development that would likely occur without the bridge.

(c) All public benefits considered under this exception must be secured by a permanent conservation easement meeting the requirements of R.30-12.N(4) on all affected property.

(d) Impact reductions that the Department may consider are:

- (i) permanent protection of habitat,
- (ii) major reductions in building density,
- (iii) major reductions in subdivision rights,
- (iv) major reductions in docks,
- (v) major increases in riparian buffers,
- (vi) other architectural and site design improvements, and
- (vii) minimization of bridge impacts to environmental and visual resources.

(11) Severability Clause. In the event that any portion of these regulations is construed by a court of competent jurisdiction to be invalid, or otherwise unenforceable, such determination shall in no manner affect the remaining portions of these regulations, and they shall remain in effect, as if such invalid portions were not originally a part of these regulations.